

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

REXON INDUSTRIAL CORPORATION, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-CV-30180-MAP
	)	
PORTER-CABLE CORPORATION,	)	
DELTA INTERNATIONAL MACHINERY	)	
CORP. and PENTAIR, INC.,	)	
	)	
Defendants.	)	
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	)	
BLACK & DECKER INC.,	)	
BLACK & DECKER (U.S.) INC. and	)	
PORTER-CABLE CORPORATION,	)	
	)	
Plaintiffs-in-Counterclaim,	)	
	)	
v.	)	
	)	
REXON INDUSTRIAL CORPORATION, LTD.,	)	
	)	
Defendant-in-Counterclaim.	)	

**BLACK & DECKER’S UNOPPOSED MOTION FOR LEAVE TO FILE AN  
AMENDED ANSWER ADDING REXON USA AS A COUNTERCLAIM DEFENDANT**

**I. INTRODUCTION**

Black & Decker Inc., Black & Decker (U.S.) Inc., Porter-Cable Corporation and Delta International Machinery (collectively “Black & Decker”) recently learned that Rexon USA, Corp. (“Rexon USA”), a Massachusetts corporation related to Plaintiff Rexon Industrial Corporation Ltd. (“Rexon”), should be added to the present litigation as a result of their involvement in the actions which constitute infringement of Black & Decker’s asserted patents. Rexon does not oppose Black

& Decker's present motion (Exhibit 1). Black & Decker's proposed Amended Counterclaims adding Rexion USA is attached hereto as Exhibit 2.

The requested addition of Rexion USA to the case at this time will not delay the progress of the litigation, is not sought in bad faith, and will not result in undue prejudice to Rexion or Rexion USA. It will not require modification to the Court's Scheduling Order. The bulk of the parties substantive document production has not yet been exchanged. No depositions have been taken. Adding Rexion USA will not have any effect on the number of patents in suit, the models of accused products or the witnesses involved. From Black & Decker's investigation into public information, it appears that Rexion USA is the marketing, sales and service arm of Rexion with respect to the products at issue in Black & Decker's Counterclaims. It makes sense to include all of the proper parties at this early stage of the litigation.

## **II. BLACK & DECKER'S REQUEST FOR LEAVE TO AMEND IS WARRANTED UNDER THE LAW**

Federal Rule of Civil Procedure 15(a) permits a pleading to be amended after a responsive pleading is served "only by leave of court or by written consent of the adverse party." The rule also provides that "leave shall be freely given when justice so requires." FED.R.CIV.P. 15(a); Cabana v. Forcier, 200 F.R.D. 9, 13 (D. Mass. 2001); Foman v. Davis, 371 U.S. 178, 182 (1962). Absent an "inordinate measure of undue delay, dilatory motive, futility, or undue prejudice," the district court should grant an amendment to the pleading. Martin v. Sands, 62 F.Supp.2d 196, 197 (D. Mass. 1999).

Additionally, Federal Rule of Civil Procedure 21 provides that a party "may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action

and on such terms as are just." FED.R.CIV.P. 21. Where the motion to amend a pleading to add a new party comes after a responsive pleading has been served, the standard for adding a party is the same whether the motion is made under Rule 15 or Rule 21. Data Gen. Corp. v. Grumman Sys. Support Corp., 825 F. Supp. 340, 344 (D. Mass. 1993). In accordance with Federal Rule of Civil Procedure 20, the addition of a new defendant is permissible when, as here, the new defendant is charged with claims that arise out of the same transaction, occurrence or series of transactions or occurrences asserted against the current defendant and the defendants must share in common at least one question of law or fact. FED.R.CIV.P. 20(a); Rhode Island Hospital Trust Nat'l Bank v. Corey, 1989 U.S. Dist. LEXIS 5281 at \*3 (D. Mass. 1989).

### **III. REXON USA SHOULD BE ADDED AS A DEFENDANT TO THE CASE**

In its counterclaims, Black & Decker has accused Rexion of infringement of its patents in two areas of technology: laser guidance and dust collection. The products accused of infringement in its counterclaims are miter saws understood to be manufactured by Rexion. From a concurrently pending litigation in the Northern District of Illinois, Black & Decker recently learned that Rexion USA assists in the importation of the accused products; provides the sales force for distribution of Rexion's accused miter saws and is involved in the instruction to end users on how to use the accused products (Exhibit 3; One World's Motion to add Rexion USA at p. 3 with Attachment Ex. C). Also, as learned from the co-pending litigation in Chicago, Rexion disclosed that some of the products accused of infringement in this case are shipped directly from Rexion to Rexion USA for distribution. For the purposes of conducting discovery and ensuring that the proper parties involved in the accused infringement of Black & Decker's patents are accountable in this lawsuit, Black & Decker seeks to add Rexion USA to the case pending in Springfield, Massachusetts.

Black & Decker's request to add Rexion USA at this time is not a result of undue delay. Promptly upon learning of the involvement of Rexion USA in Rexion's business operations, Black & Decker's counsel contacted Rexion's counsel to inquire as to whether or not Rexion would agree to Black & Decker's motion for leave to add Rexion USA. Upon receiving Rexion's communication that it would not oppose Black & Decker's motion, Black & Decker prepared the present papers for filing.

Moreover, there is no futility in or prejudice to Rexion or Rexion USA resulting from the addition of Rexion USA to the litigation. In fact, adding Rexion USA to the litigation will facilitate discovery of the proper sales and marketing information sought by Black & Decker in the pursuit of its infringement claims. Rexion has repeatedly stated that its on-going document production and interrogatory responses will not substantively be completed for several weeks - - once its overseas investigation can be completed (MacDonald 9/18 letter, Exhibit 4). Thus, adding Rexion USA as a party and initiating discovery with the domestic subsidiary of Rexion at this time will coincide with Rexion's international discovery production in time for depositions to be scheduled and conducted. Rexion USA is represented by Rexion's counsel in the co-pending litigation and it appears that Rexion's lawyers who have appeared in this case on Rexion's behalf are also representing Rexion USA.

Finally, Black & Decker's counterclaims against Rexion regarding the infringement of its patents arise from the same transactions which give rise to the infringement allegations against Rexion USA. Both Rexion and Rexion USA make, use, offer for sale and/or sell one or more of the miter saw products accused of infringement in this lawsuit. Black & Decker has recently learned that the activities of Rexion and Rexion USA (and perhaps the corporate structures of the companies

themselves) significantly overlap with each other; the extent of which involve common questions of law and fact. By adding Rexon USA to the lawsuit at this time, without opposition from Rexon, would further Black & Decker's efforts to continue the discovery process efficiently and with all proper parties accountable.

#### IV. CONCLUSION

Black & Decker respectfully requests leave to file its Amended Counterclaims in order to add Rexon USA to this lawsuit. Rexon does not oppose Black & Decker's motion. Adding Rexon USA to the lawsuit would not cause undue delay, is not sought in bad faith, would not result in prejudice to Rexon or Rexon USA and would not be futile.

Respectfully submitted,

/s/ Dina M. Hayes

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Corporation and Delta International  
Machinery Corporation**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2005, I electronically filed the foregoing **BLACK & DECKER'S UNOPPOSED MOTION FOR LEAVE TO FILE AN AMENDED ANSWER ADDING REXON USA AS A COUNTERCLAIM DEFENDANT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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**Attorneys for Rexon Industrial Corporation, Ltd.  
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I certify that all parties in this case are represented by counsel who are CM/ECF participants.

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